

## ANALYSIS OF AMENDED BILL

Author: Baca Analyst: Jeani Brent Bill Number: AB 3  
Related Bills: See Legislative History Telephone: 845-3410 Amended Date: 04/13/98  
Attorney: Doug Bramhall Sponsor: \_\_\_\_\_

**SUBJECT:** Local Agency Military Base Recovery Area/Increase Designations/Modify Hiring Credit/Increase Business Expense Deduction

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

☒ FURTHER AMENDMENTS NECESSARY.

☒ DEPARTMENT POSITION CHANGED TO Pending.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 18, 1998, STILL APPLIES.

☒ OTHER - See comments below.

### SUMMARY OF BILL

Under the Government Code, this bill would allow Trade and Commerce Agency (TCA) to designate five additional Local Agency Military Base Recovery Areas (LAMBRAs) anywhere in this state. This bill also would delete the requirement that TCA designate the LAMBRAs no later than one year from the effective date of its LAMBRA regulations and would provide for specified loan priorities and contract preference points to businesses located, or contracts performed, in a LAMBRA. The last two provisions mentioned above would not impact the department and are not discussed in this analysis.

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would change the hiring credit definition of "qualified disadvantaged individual" and increase the amount of the allowable business expense deduction.

### SUMMARY OF AMENDMENT

The April 13, 1998, amendment removed the provision that would have extended the LAMBRA designation period from eight years to 15 years.

### DEPARTMENTS THAT MAY BE AFFECTED:

\_\_\_\_ STATE MANDATE

\_\_\_\_ GOVERNOR'S APPOINTMENT

#### Board Position:

\_\_\_\_ S      \_\_\_\_ O  
\_\_\_\_ SA      \_\_\_\_ OUA  
\_\_\_\_ N      \_\_\_\_ NP  
\_\_\_\_ NA      \_\_\_\_ NAR  
\_\_\_\_ X \_\_\_\_ PENDING

#### Agency Secretary Position:

\_\_\_\_ S      \_\_\_\_ O  
\_\_\_\_ SA      \_\_\_\_ OUA  
\_\_\_\_ N      \_\_\_\_ NP  
\_\_\_\_ NA      \_\_\_\_ NAR  
DEFER TO \_\_\_\_\_

#### GOVERNOR'S OFFICE USE

Position Approved \_\_\_\_\_  
Position Disapproved \_\_\_\_\_  
Position Noted \_\_\_\_\_

Department/Legislative Director      Date

Johnnie Lou Rosas      5/1/98

Agency Secretary      Date

By:      Date:

EFFECTIVE DATE

This bill would apply to taxable or income years beginning on or after January 1, 1999.

LEGISLATIVE HISTORY

AB 638, AB 639 (1997); AB 1984 (1995/96); AB 3601 (Stats. 1994, Ch. 146), AB 693 (Stats. 1993, Ch. 1216).

PROGRAM HISTORY/BACKGROUND

California has five types of economic development areas that have similar tax incentives:

- Enterprise Zones,
- Los Angeles Revitalization Zone (LARZ),
- Local Agency Military Base Recovery Areas (LAMBRA),
- Targeted Tax Area (TTA), and
- Manufacturing Enhancement Areas (MEA)

The following table shows the incentives available to each of the economic development areas.

Types of Incentives	EZ	LARZ	LAMBRA	TTA	MEA
Sales or Use Tax Credit	X	X	X	X	
Hiring Credit	X	X	X	X	X
Construction Hiring Credit		X			
Employee Wage Credit	X				
Business Expense Deduction	X	X	X	X	
Net Interest Deduction	X	X			
Net Operating Loss	X	X	X	X	

\* NOTE: the LARZ expires December 1, 1998.

SPECIFIC FINDINGS

**Under the Government Code, existing state law** establishes mechanisms for designating LAMBRAs in California to stimulate development in areas that experience military base closures. The governing body of an eligible area may apply to TCA for designation as a LAMBRA. Using specified criteria, TCA is responsible for designating five LAMBRAs, one from each of the five regions (as specified) of the state. Each LAMBRA designation is binding for eight years.

Currently, TCA has designated two of the five LAMBRAs authorized under existing law: Southern California International Airport (formerly George Air Force Base) was designated on February 1, 1996, and Castle Air Force Base was designated on June 1, 1996. The other three areas have received conditional designation: Mare Island Naval Shipyard, Alameda Naval Air Station, and Tustin Marine Corps Air Station.

**Under the Revenue and Taxation Code, existing state law** provides special tax incentives to taxpayers who conduct business activities within a LAMBRA (only those fully designated) and, within the first two taxable years, have a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or

more employees in the LAMBRA. These tax incentives (sales or use tax credit, hiring credit, business expense deduction, and special net operating loss treatment) are available for taxable or income years beginning on or after January 1, 1995, and before January 1, 2003. See Attachment A for a detailed discussion of each tax incentive.

**Under the Government Code, this bill** would allow TCA to designate five additional LAMBRAs anywhere in this State.

**Under the PITL and the B&CTL, this bill** would make the following changes to the LAMBRA tax incentives, similar to changes previously made to the enterprise zone incentives. Businesses operating in each of the new LAMBRAs would be eligible for the existing tax incentives.

- Technically change the hiring credit definition of "qualified disadvantaged individual" to replace language regarding the federal Targeted Jobs Tax Credit Program, which has expired, with language similar to the requirements of that program.
- Increase the amount of the allowable business expense deduction to mirror the amount allowed to businesses that operate within enterprise zones: 40% of the cost, which is limited to a range of \$100,000 for the taxable year of designation to \$50,000 for the fourth taxable year after designation.

#### Policy Considerations

Although the federal Targeted Jobs Tax Credit (TJTC) Program has expired, the criteria in the LAMBRA hiring credit specifically states an individual is eligible as a qualified employee if they meet the TJTC criteria, "whether or not this program is in effect." Thus, replacing the existing criterion with language similar to the requirements of the TJTC program appears unnecessary and potentially confusing for taxpayers.

Although the changes this bill would make to the LAMBRA hiring credit are similar to the changes previously made to the enterprise zone hiring credit, this bill would create some differences in the definition of "qualified disadvantaged individual." For instance, this bill would require that economically disadvantaged individuals be 16 years or older, whereas the enterprise zone requirement is 14 years or older.

#### Implementation Consideration

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the department's normal annual update.

#### Technical Consideration

The hiring credit provisions of this bill contain the law as it existed prior to the enactment of AB 1040 (Stats 1997, Ch. 605) AB 1040 removed the election provision from the LAMBRA hiring credit that required the taxpayer to elect, on the original return, one credit if the expenditure for the employee's wages qualifies the taxpayer for more than one credit and replaced that election with a provision limiting the taxpayer to one credit

with respect to qualified wages. Because this bill contains prior law, this bill would reinstate the election language, thereby requiring taxpayers to make an election to claim the credit on their original return. Amendment 1 and 2 would delete the bill's current hiring credit provisions and insert existing law provisions with all the applicable changes proposed by this bill.

The amendment that changed the hiring credit definition of "qualified disadvantaged individual" to replace language regarding the repealed federal Targeted Jobs Tax Credit Program with language to mirror the requirements of that program inadvertently removed two other paragraphs relating to the federal Job Training Partnership Act and the federal Greater Avenues for Independence Act. Amendment 1 would reinsert these paragraphs.

#### FISCAL IMPACT

##### Departmental Costs

This bill would not significantly impact the department's costs.

##### Tax Revenue Estimate

The first fiscal year with a revenue impact would be 1999-0 because of the timing of final designations.

Estimated Revenue Impact of AB 3 As Amended April 13, 1998 (\$in Millions)					
	1999-0	2000-1	2001-2	2002-3	2003-4
First 3 LAMBRAs	(minor) *	(\$3)	(\$6)	(\$9)	(\$10)
Last 2 LAMBRAs	--	(minor) *	(\$2)	(\$4)	(\$6)
Total	(minor) *	(\$3)	(\$8)	(\$13)	(\$16)

\* Less than \$500,000

Revenue losses in subsequent years could increase significantly as more businesses invest in these areas and the profitability of such operations improve. This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

##### Tax Revenue Discussion

Revenue losses under the PITL and the B&CTL would depend on the number of businesses that would purchase qualified property subject to the sales tax, the amount of wages paid to qualifying employees, and the state tax liabilities of employers claiming tax benefits.

Because the effectiveness of a new area is unknown, the average revenue loss of \$3 million per LAMBRA by the third full year after implementation has been used (see below for basis). Losses for the initial years would be less.

It is anticipated that three of the five new LAMBRAs would be fully established by September of 1999 and the remaining two by September of 2000.

Estimates above reflect the full impact by 2002-3 for the initial three and 2003-4 for the last two. The expensing allowance for employers on certain property placed in service in LAMBRAs is enlarged and reflects the Enterprise Zone limits.

#### **Sales Or Use Tax Credit**

The average sales and use tax rate for California is 7.92%. For every \$100 million in qualified property of which one-fourth of the calculated credit could be used to offset apportioned tax liabilities for the first year, the revenue loss would be \$2 million for each additional LAMBRA designation.

#### **Hiring Credit**

Assuming an average wage of \$8.50 per hour, for every 1,000 employees who work an average of 1,000 hours and qualify employers for the first year credit, the revenue loss would be \$1 million for each additional designation (assuming 25% of calculated credits could be used to offset apportioned tax liabilities).

#### **Expense Deduction**

The loss would probably be minor, due to the limitation for the amount of expensing. For larger equipment many taxpayers would continue to use depreciation rather than the option under this provision to expense.

#### **Net Operating Losses**

The revenue loss for the option of the 100% net operating loss deduction applied against income attributed to the LAMBRA (rather than applying other net operating loss provisions) would probably be minor in the first few years. This estimate is based on current law experience for enterprise zones and program areas and law changes that now permit small and new businesses to use 100% carryover.

#### BOARD POSITION

Pending.

**ATTACHMENT A**

**LAMBRA Sales or Use Tax Credit**

The sales or use tax credit is allowed for an amount equal to the sales or use taxes paid on the purchase of qualified machinery purchased for exclusive use in a LAMBRA. The amount of the credit is limited to the tax attributable to LAMBRA income. Qualified property is defined as high technology equipment (e.g., computers), aircraft maintenance equipment, aircraft components, or certain depreciable property. In addition, qualified property must be purchased and placed in service before the LAMBRA designation expires. The maximum value of property that may be eligible for the sales or use tax credit is \$1 million for individuals and \$20 million for corporations.

**LAMBRA Hiring Credit**

A business located in a LAMBRA may reduce tax by a percentage of wages paid to qualified employees. A qualified employee must be hired after the area is designated a LAMBRA and meet certain other criteria. At least 90% of the qualified employee's work must be directly related to a trade or business located in the LAMBRA and at least 50% must be performed inside the LAMBRA. The business may claim up to 50% of the wages paid to a qualified employee as a credit against tax imposed on LAMBRA income. The credit is based on the lesser of the actual hourly wage paid or 150% of the current minimum hourly wage. The amount of the credit must be reduced by any other federal or state jobs tax credits and the taxpayer's deduction for ordinary and necessary trade or business expenses must be reduced by the amount of the hiring credit.

**LAMBRA Business Expense Deduction**

A business located in a LAMBRA may elect to deduct as a business expense a specified amount of the cost of qualified property purchased for exclusive use in the LAMBRA. The deduction is allowed in the taxable or income year in which the taxpayer places the qualified property in service. The basis of the property must be reduced by the amount of the deduction. The maximum deduction for all qualified property is the lesser of the cost or the following:

If the property was placed in service:

Months after designation	Maximum deduction
0 to 24	\$40,000
25 to 48	30,000
48 and over	20,000

**LAMBRA Net Operating Loss Deduction**

A business located in a LAMBRA may elect to carry over 100% of the LAMBRA net operating losses (NOLs) to deduct from LAMBRA income in future years. The election must be made on the original return for the year of the loss. The NOL carryover is determined by computing the business loss that results from business activity in the LAMBRA.

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 3  
As Amended April 13, 1998

AMENDMENT 1

On page 9, strikeout lines 15 through 39, strikeout pages 10 through 15, on page 16, strikeout lines 1 through 32, and insert:

17053.46. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "net tax" (as defined in Section 17039) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the taxable year for employment in the LAMBRA. The credit shall be equal to the sum of each of the following:

- (1) Fifty percent of the qualified wages in the first year of employment.
- (2) Forty percent of the qualified wages in the second year of employment.
- (3) Thirty percent of the qualified wages in the third year of employment.
- (4) Twenty percent of the qualified wages in the fourth year of employment.
- (5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals or qualified displaced employees that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars (\$2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(4) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in the LAMBRA.

(B) Who is hired by the employer after the designation of the area as a LAMBRA in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

~~(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program whether or not this program is in effect.~~

(iii) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(II) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of such a closure or layoff.

(III) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(IV) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(V) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(VI) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) Has been terminated or laid off or has received a notice of termination or layoff as a consequence of compliance with the Clean Air Act.

(v) An individual who is enrolled in or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(vi) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.



(5) "Qualified taxpayer" means a taxpayer or partnership that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B), the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(6) "Qualified displaced employee" means an individual who satisfies all of the following requirements:

(A) Any civilian or military employee of a base or former base who has been displaced as a result of a federal base closure act.

(B) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in a LAMBRA.

(C) Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.

(c) (1) For purposes of this section, both of the following apply:

(A) All employees of trades or businesses that are under common control shall be treated as employed by a single employer.

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles that apply in the case of controlled groups of corporations as specified in subdivision (e) of Section 23622.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor")

or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(4) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (5) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's net tax for the taxpayer's second taxable year.

(e) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(f) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(h) (1) The amount of credit otherwise allowed under this section and Section 17053.45, including prior year credit carryovers, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributed income represented all of the net income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (g).

(i) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (g), until the credit is exhausted.

## AMENDMENT 2

On page 20, strikeout lines 33 through 40, strikeout pages 21 through 27, on page 28, strikeout lines 1 through 18, and insert:

23646. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the income year for employment in the LAMBRA. The credit shall be equal to the sum of each of the following:

- (1) Fifty percent of the qualified wages in the first year of employment.
- (2) Forty percent of the qualified wages in the second year of employment.
- (3) Thirty percent of the qualified wages in the third year of employment.
- (4) Twenty percent of the qualified wages in the fourth year of employment.
- (5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the employer during the income year to qualified disadvantaged individuals or qualified displaced employees that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars (\$2,000,000) per income year.

(C) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "LAMBRA" means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

(4) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the income year in the LAMBRA.

(B) Who is hired by the employer after the designation of the area as a LAMBRA in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 provided ~~for~~ pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

~~(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program whether or not this program is in effect.~~

(iii) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(II) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of such a closure or layoff.

(III) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(IV) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(V) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(VI) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) Has been terminated or laid off or has received a notice of termination or layoff as a consequence of compliance with the Clean Air Act.

(v) An individual who is enrolled in or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(vi) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(5) "Qualified taxpayer" means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees as determined below in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a qualified taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be

multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(6) "Qualified displaced employee" means an individual who satisfies all of the following requirements:

(A) Any civilian or military employee of a base or former base that has been displaced as a result of a federal base closure act.

(B) (i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the income year in a LAMBRA.

(C) Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.

(c) (1) For purposes of this section, both of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single employer.

(B) The credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

(2) For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that both of the following apply:

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to Section 1563 (a)(4) and Section 1563(e)(3)(C) of the Internal Revenue Code.

(3) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) A transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) A mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(4) At the close of the second income year, if the taxpayer has not increased the number of its employees as determined by paragraph (5) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's tax for the taxpayer's second income year.

(e) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Section 46(e) and Section 46 (h) of the Internal Revenue Code shall apply.

(f) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(h) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (g).

(i) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried over as provided in subdivision (g), until the credit is exhausted.